

BUSINESS CORPORATION ACT (EXCERPT)
Act 284 of 1972

450.1703a Plan of merger or share exchange; approval.

Sec. 703a. (1) A plan of merger or share exchange adopted by the board of each constituent corporation shall, except as provided in subsection (2)(e) and (f), be submitted for approval at a meeting of the shareholders.

(2) All of the following apply to the approval of a plan of merger or share exchange under this section:

(a) The board must recommend the plan of merger or share exchange to the shareholders, unless section 529 applies or the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation. If the board does not recommend the plan of merger or share exchange to the shareholders, or recommends against the plan of merger or share exchange, in either case because 1 or more of the exceptions described in this subdivision apply, the board must communicate to the shareholders the basis for its decision.

(b) The board may condition its submission of the proposed merger or share exchange on any basis.

(c) Notice of the shareholder meeting shall be given to each shareholder of record, whether or not entitled to vote at the meeting, within the time and in the manner provided in this act for giving notice of meetings of shareholders. The notice shall include or be accompanied by all of the following:

(i) A copy or summary of the plan of merger or share exchange. If a summary of the plan is given, the notice shall state that a copy of the plan is available on request.

(ii) A statement informing shareholders that are entitled to dissent under section 762 that they have the right to dissent and to be paid the fair value of their shares by complying with the procedures set forth in sections 764 to 772.

(d) At the meeting, the shareholders shall vote on the proposed plan of merger or share exchange. The plan is approved if it receives the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote on the plan, and if a class or series is entitled to vote on the plan as a class, the affirmative vote of the holders of a majority of the outstanding shares of the class or series. A class or series of shares is entitled to vote as a class in the case of a merger, if the plan of merger contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class or series of shares to vote as a class, or, in the case of a share exchange, if the class or series is included in the exchange. A class or series of shares is not entitled to vote as a class in the case of a merger or share exchange, if the board of directors determines on a reasonable basis that the class or series is to receive consideration under the plan of merger or share exchange that has a fair value that is not less than the fair value of the shares of the class or series on the date of adoption of the plan.

(e) Except as provided in section 754 or unless required by the articles of incorporation, action by the shareholders of the surviving corporation on a plan of merger is not required if all of the following apply:

(i) The articles of incorporation of the surviving corporation will not differ from its articles of incorporation before the merger.

(ii) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger.

(f) Except as provided in section 754, action by the shareholders of the acquiring corporation on a plan of share exchange is not required.

(g) A plan of merger or share exchange may provide for differing forms of consideration for holders of shares in the same class based on the election of the holders, the amount of shares held, or another reasonable basis.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.